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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Clear Channel Broadcasting, Inc.

Serial No. 78954167

Pamela B. Huff of Cox Smith Matthews Incorporated for Clear Channel Broadcasting, Inc.

Melissa Vallillo, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Hohein, Holtzman and Ritchie de Larena, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, Clear Channel Broadcasting, Inc., has filed an application to register the mark ORGULLO LATINO, in standard character format, for "radio broadcasting services" in Class 38. The application includes a translation of the mark as "Latino Pride," and a disclaimer of the word "Latino."¹

¹ Application Serial No. 78954167, filed August 17, 2006, based on an allegation of a bona fide intention to use the mark in commerce. Applicant has claimed ownership of Registration No. 3065752 for the mark LATINO & PROUD for "radio broadcasting services." Applicant filed an amendment to allege use of the mark on February 28, 2007, alleging dates

The trademark examining attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the standard character mark CON ORGULLO MEXICANO for the services identified below as to be likely to cause confusion.² The registration contains a translation of the mark as "WITH MEXICAN PRIDE."

Radio broadcasting services, in Class 38; and

Radio entertainment services in the nature of ongoing audio programs featuring music, news, talk shows, listener call-ins, public service announcements, traffic reports, and special events, namely, grand openings, remote broadcasts, sports, charities, festivals and listener contests; Educational and entertainment services, namely, providing motivational and educational speakers, in Class 41.

When the refusal was made final, applicant appealed.

Briefs have been filed.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, however, two key

of first use and first use in commerce on August 15, 2006. The amendment was accepted by the examining attorney on March 23, 2007.

² Registration No. 3065028, issued March 7, 2006. The registration also includes services in Class 35. However, as there is no argument or evidence pertaining to the services in that class, we consider the refusal to be based only on the services in Classes 38 and 41.

considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We turn first to the services. Applicant's "radio broadcasting services" are identical to the "radio broadcasting services" identified in the registration. Because there are no restrictions in the application or registration, these identical services must be deemed to be offered in the same channels of trade and directed to the same purchasers and/or users. See *Genesco Inc. v. Martz*, 66 USPQ2d 1260 (TTAB 2003); and *Interstate Brands Corp. v. McKee Foods Corp.*, 53 USPQ2d 1910 (TTAB 2000). We note that the potential customers of broadcasting services include not only purchasers, that is the advertisers who would buy advertising time from the broadcaster, but also radio listeners, who are ordinary members of the general public. As the Board explained in *In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214, 1218 (TTAB 2001) in discussing the customers for broadcasting services:

...the public at large who watches television and listens to radio comprises another class of consumers that is relevant to our likelihood of confusion analysis. Although these individuals do not "purchase" broadcasting services in the sense that they pay for such services (other than, for example, paying for cable television, satellite television, premium channels and the like), the broadcast services are certainly directed to this class that "uses" the services, and likelihood of confusion among viewers and listeners is relevant.

Furthermore, everyday listeners of radio would not be expected to exercise more than ordinary care in their program choices, and thus would be more prone to confusion. *Kimberly-Clark Corp. v. H. Douglas Enter., Ltd.*, 774 F.2d 1144, 1146, 227 USPQ 541, 542 (Fed. Cir. 1985).

We turn then to a comparison of applicant's mark ORGULLO LATINO, meaning "Latino pride," with registrant's mark CON ORGULLO MEXICANO, meaning "with Mexican pride." The examining attorney argues that the marks are similar in that they share the word ORGULLO; and that the marks convey similar commercial impressions in that the word LATINO is a broad term that includes MEXICANO. The examining attorney has submitted dictionary definitions, including an entry from *dictionary.com* defining "Latino" as "a person of Latin-American or Spanish-speaking descent." For the meaning of "Latin-America", the examining attorney points to an entry from *Wikipedia.org* submitted by applicant. The entry states that "There are several definitions of Latin America":

- * From a strict cultural and linguistic perspective, it would include all countries and territories in the Americas where Romance languages - Spanish, Portuguese, French, and their creoles - are spoken.
- * The most common view is that Latin America includes territories in the Americas where Spanish or Portuguese prevail: Mexico, most of Central America, South America, and the Caribbean (both in land area and population). ...

- * Sometimes, particularly in the United States, the term "Latin America" is used to refer to *all* of the Americas south of the U.S., including countries such as Belize, Trinidad and Tobago, Guyana, ...where non-Romance languages prevail. ... [Italics in original.]

Based on this evidence, the examining attorney concludes that the term LATINO may identify a person of Mexican descent, and therefore it is "an inclusive term that encompasses MEXICANO."

The examining attorney further argues that LATINO and MEXICANO are also related in that they are often used interchangeably "or to identify a single community." To support these contentions, the examining attorney submitted printouts from various third-party websites purporting to show that Mexican music is often identified as Latin music, and that Mexican restaurants are often described as Latin-Mexican. The examining attorney also points to use of the term "Mexicano/Latino" appearing in various publications, including a book entitled Athletes Remembered: Mexicano/Latino Professional Football Players, 1929-1970 (amazon.com); an article by Elizabeth Garza describing the plight of Mexicano/Latino students (findarticles.com); an article describing a student organization that seeks to promote the Chicano Mexicano/Latino heritage (aztlan.net); and a press advisory by the National Alliance for Human Rights describing a meeting that seeks to formulate a

Mexicano/Latino response to legislation that may be harmful to Mexicano/Latino communities (actionla.org).³

Applicant argues that the marks differ in sound and appearance in view of the additional term CON in registrant's mark, which is also the first word in registrant's mark, and because of the differences between the terms MEXICANO and LATINO. Applicant also argues that the marks as a whole convey distinct commercial impressions. Applicant agrees with the examining attorney that the term LATINO is inclusive of "'Latin-America and/or Spanish-speaking ancestry, including Mexico'"; and that the term LATINO is "a broad, adjectival 'genus' which includes many narrower, adjectival 'species,' such as, Mexican, Belizean, Guatemalan, [etc]."

Applicant, however, disputes the examining attorney's characterization of the two terms as interchangeable, or even similar. Applicant contends that LATINO is an "ethnic name" which may apply to a person irrespective of his country of origin, whereas the term MEXICANO is a separate and distinct "national name" which applies only to people originating from the country of Mexico.⁴ Applicant maintains that consumers of radio broadcasting

³ The Google search summaries made of record by the examining attorney are of little probative value as they provide insufficient context to determine how the term is actually used on the webpage. See *Paris Glove of Canada Ltd. v. SBC/Sporto Corp.*, 84 USPQ2d 1856 (TTAB 2007).

⁴ Applicant's objection to the evidence attached to the examining attorney's denial of applicant's request for reconsideration is not well taken. See *In re Giger*, 78 USPQ2d 1405, 1406 (TTAB 2006), noting that while the record in the application should be complete prior to the filing

services "are keenly aware of the distinction between LATINO as a genus and MEXICANO as a species thereof."

In support of its arguments, applicant submitted portions of a publication entitled Hispanic/Latino Identity: A Philosophical Perspective by Jorge J.E. Gracia, a professor of philosophy at the State University of New York at Buffalo; and portions of U.S. Latino Issues, an educational resource by Rodolfo F. Acuña discussing "Contemporary American Ethnic Issues" and debating the issues concerning use of the term "Latino."⁵

In evaluating the similarities or dissimilarities of marks, we must consider the marks in their entirety in terms of sound, appearance, meaning and commercial impression. In making this determination, it is important to consider that when, as here, the marks are used in connection with identical services, less similarity in the marks is required to support a finding of likelihood of confusion. See *Century 21 Real Estate v. Century Life*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

of an appeal, under circumstances where an applicant has elected to file a request for reconsideration, the examining attorney may submit additional evidence. See also TMEP §715.03.

⁵ The Google search result summaries attached to applicant's brief are untimely and have not been considered. Although the examining attorney did not specifically object to this evidence, she has not discussed the evidence or otherwise treated the material as of record. See TBMP 1207.03 (2d ed. rev. 2004). See also TBMP §1207.04 (2d ed. rev. 2004) (If an applicant wishes to submit additional evidence after appeal, it must file a request for remand). We add, however, that even if we did consider this evidence, it would not affect our decision in this case.

When we compare the marks ORGULLO LATINO ("Latino pride") and CON ORGULLO MEXICANO ("with Mexican pride") in their entireties, we find that while there are differences between the marks, the similarities between the marks are more significant and outweigh those differences.

The marks have a similar structure, with ORGULLO or CON ORGULLO followed by a term that describes the intended audience for the services, LATINO or MEXICANO (i.e., Latino or Mexican). The shared word ORGULLO or "pride," a term which although perhaps suggestive of the services, is nonetheless visually and aurally a significant part of both marks. We note that there is no evidence that ORGULLO is highly suggestive of the services or that the term is commonly used or registered by others for similar services. The additional word CON, meaning "with," is the first word in registrant's mark as applicant notes. However, that word is simply a preposition that introduces the phrase ORGULLO MEXICANO. It is a detail that consumers are not likely to remember when encountering the marks at different times on identical services. Further, the word "CON" adds nothing new to the meaning or commercial impression of ORGULLO MEXICANO.

The two marks create similar overall commercial impressions and would convey similar meanings to the audiences or potential audiences for the radio broadcasts. We agree with applicant that the terms MEXICANO and LATINO are not interchangeable in the sense

that they are equivalent terms per se. At the same time, however, applicant's evidence regarding the meaning or perception of LATINO is not particularly persuasive. The views of analysts and philosophers do not necessarily represent the views or perceptions of consumers.⁶

In any event, regardless of whether the term LATINO is used to identify an ethnic group or a cultural group or a language group or a nationality, and notwithstanding that MEXICANO and LATINO do not have the same meanings, they are clearly related concepts. It seems clear from the evidence, and applicant does not dispute, that Mexicans are considered part of the greater Latino community. When viewed as a whole in the context of the services, both marks would suggest radio programs with similar or overlapping messages and themes. At least some of the same radio programs that would appeal to the cultural or ethnic identity of Latinos would appeal to the Mexican community as well. Consumers who are familiar with the ORGULLO LATINO radio station may regard CON ORGULLO MEXICANO as identifying a particular segment of the ORGULLO LATINO broadcast, or they may assume that two broadcast services come from, or are in some way associated with or sponsored by, the same company.

⁶ To illustrate what applicant considers to be the broad distinction between "Mexican" and "Latino," applicant uses an example of the hypothetical marks "Anglo-Saxon pride" and "with New Zealand pride." This analogy, to the extent it is one, has no bearing on the likely perception of the marks involved in this case, or on the question of whether the marks in this case are likely to cause confusion.

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In view of the foregoing, and because similar marks are used in connection with identical services, we find that confusion is likely.

To the extent that there is any doubt on the issue of likelihood of confusion, it is settled that such doubt must be resolved in favor of the prior registrant. In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993).

Decision: The refusal to register is affirmed.